

### **REMARKS**

Claims 1-10, 12-33, and 36-43 are currently pending in this application, with claims 6, 8, 12, 14-20, 23, and 24 having been withdrawn from consideration. None of the claims are amended.

### **DRAWINGS**

As requested by the Office Action, a set of replacement drawing sheets is submitted with this response. The Office Action also requests that FIG. 1 show the entire implant being covered by the filter layer. In reply, Applicants explain below that the filter layer does not necessarily cover the entire implant. Therefore, it is not necessary that FIG. 1 show the entire implant being covered by the filter layer.

### **SPECIFICATION**

The Office Action asks where written support can be found for a filter layer that is “continuous,” as recited in claims 1 and 31. In reply, Applicants refer to the MPEP 2163.02, which instructs:

Whenever the issue arises, the fundamental factual inquiry is whether the specification conveys with reasonable clarity to those skilled in the art that, as of the filing date sought, applicant was in possession of the invention as now claimed. See, e.g., *Vas-Cath, Inc. v. Mahurkar*, 935 F.2d 1555, 1563-64, 19 USPQ2d 1111, 1117 (Fed. Cir. 1991). An applicant shows possession of the claimed invention by describing the claimed invention with all of its limitations using such descriptive means as words, structures, figures, diagrams, and formulas that fully set forth the claimed invention. *Lockwood v. American Airlines, Inc.*, 107 F.3d 1565, 1572, 41 USPQ2d 1961, 1966 (Fed. Cir. 1997).

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The subject matter of the claim need not be described literally (i.e., using the same terms or *in haec verba*) in order for the disclosure to satisfy the description requirement.

Thus, the MPEP instructs that possession of the claimed invention can be demonstrated by figures and diagrams. The MPEP further instructs that the subject matter of the claim does not need to be described literally.

Accordingly, Applicants submit that support for a filter layer that is “continuous” can be found at least in FIG. 1 in the drawings, which shows the meso-porous filter layer 14 covering

over the catalytic layer 15 without any gaps in coverage (i.e., the filter layer 14 is continuous over the catalytic layer 15). By not having gaps in the filter layer 14, the filter layer 14 may “function to prevent red blood cells 12 and white blood cells 13 from . . . reaching the catalytic layer 15.” (Specification at ¶ [0017]).

Furthermore, in view of the fact that Alt ‘438 (US 2004/0039438) shows a coating having an outermost layer 40 with gaps (as further explained below), a person of ordinary skill in the art would find it notable that the filter layer 14 in FIG. 1 of the present application does not have any such gaps. A person of ordinary skill in the art would further understand that because filter layer 14 serves the function of preventing red blood cells and white blood cells from reaching the catalytic layer 15, filter layer 14 should not have any gaps in coverage over the catalytic layer 15. Therefore, it would be understood that filter layer 14 represents a continuous layer over catalytic layer 15.

For at least these reasons, Applicants respectfully submit that a “continuous filter layer,” as recited in claims 1 and 31, is fully supported by the disclosure of this application. Accordingly, withdrawal of the rejection is respectfully requested.

### **REJECTIONS UNDER § 112**

The Office Action rejects claim 25 as being non-compliant with the definiteness requirement of § 112, second paragraph. The Office Action contends that claim 25 is contradictory to claim 1. Applicants respectfully disagree.

Claim 1 recites a “filter layer [that] continuously covers a catalyst.” Claim 25 recites that certain regions of the stent are covered with the filter layer while other regions are not. Claim 25 does not contradict claim 1 because the continuous relationship is between the filter layer and the catalyst, not necessarily between the filter layer and the surface of the medical device.

In the implant of claim 1, whether or not the filter layer covers over the entire surface depends on whether the catalyst covers the entire surface. If the catalyst does not cover the entire surface, then the filter layer does not necessarily cover the entire surface. But nevertheless, the filter layer will still continuously cover the catalyst, as required by claim 1. Thus, because the filter layer does not necessarily cover the entire surface of the medical device, claim 25 does not contradict claim 1.

For at least these reasons, Applicants respectfully submit that claim 25 is compliant with the definiteness requirement of § 112, second paragraph. Accordingly, withdrawal of the rejection is respectfully requested.

### REJECTIONS UNDER § 103

The Office Action rejects claim 1 and various claims that depend therefrom under § 103(a) as being unpatentable over Alt '438 (US 2004/0039438; Boston Scientific Scimed) in view of Narhi (US 7,527,804) and Hehrlein (EP 1319416); and for claims 21, 22, and 28, further in view of Smalley (US 2002/0085968). The Office Action also rejects claims 31-33 and 39 under § 103(a) as being unpatentable over Trozera (US 6,475,233) in view of Alt '438, Narhi, and Hehrlein. Applicants respectfully request reconsideration of these rejections.

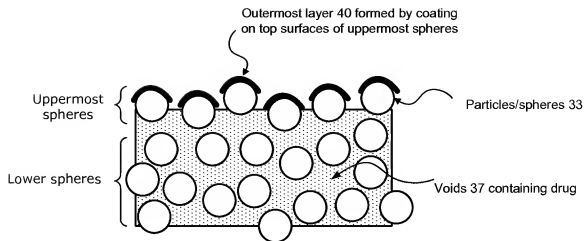
Independent claims 1 and 31 recite a “continuous filter layer, wherein the filter layer continuously covers a catalyst that promotes the decomposition of hydrogen peroxide.” The Office Action concedes that Alt '438 is silent with regard to a continuous filter layer. However, the Office Action contends that Hehrlein teaches the use of a continuous ceramic filter layer, and suggests that this continuous ceramic filter layer could be used in place of the outermost layer 40 of Alt '438.

Applicants respectfully submit that this suggested modification is improper because it would render the Alt '438 coating inoperative for its intended purpose. MPEP 2143.01(V) instructs that if the “proposed modification would render the prior art invention being modified unsatisfactory for its intended purpose, then there is no suggestion or motivation to make the proposed modification.”<sup>1</sup>

Referring to the illustration that was provided in Applicants' prior response (reproduced below), Alt '438 teaches that the outermost layer 40 should “*merely* cover the more exposed surfaces of particles 33” and more specifically, “*primarily the top surfaces of the uppermost spheres of intermediate layer 32.*” (Alt '438, at ¶ [0038]; emphasis added). This non-continuous coverage of the particles in the outermost layer 40 results in gaps in outermost layer 40.

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<sup>1</sup> Citing *In re Gordon*, 733 F.2d 900, 221 USPQ 1125 (Fed. Cir. 1984).



The gaps in outermost layer 40 serve a role in the release of drug from the Alt '438 coating. As shown above, the Alt '438 coating has voids 37 between particles 33 that contain drugs that are intended for release. (Alt '438, e.g., ¶¶ [0036], [0039], and [0040]). Thus, the gaps in outermost layer 40 are needed to allow for the release of the drugs from the voids 37. If the outermost layer 40 were to be replaced with a continuous ceramic coating, the drugs would be trapped within voids 37 instead of being released as intended. Thus, replacing the outermost layer 40 in Alt '438 with the continuous ceramic coating of Hehrlein would render the Alt '438 coating inoperative for its intended purpose, i.e., the release of drugs from the coating.

Neither Narhi, Trozera, nor Smalley cures these deficiencies of Alt '438, nor supplies any motivation for providing outermost layer 40 as a continuous coating. For at least these reasons, Applicants respectfully submit that claims 1 and 31, and the claims that depend therefrom, are non-obvious in view of Alt '438 in view of Narhi, Trozera, and/or Smalley. Accordingly, withdrawal of the rejections is respectfully requested.

**CONCLUSION**

Applicants respectfully submit that the present application is in condition for allowance. The Examiner is invited to contact Applicants' representative to discuss any issue that would expedite allowance of this application.

The Commissioner is authorized to charge all required fees, fees under § 1.17, or all required extension of time fees, or to credit any overpayment to Deposit Account No. 11-0600 (Kenyon & Kenyon LLP).

Respectfully submitted,

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